

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

United States of America

v.

BRIAN O'NEAL WADDELL

Date of Previous Judgment: 08/18/2003

(Use Date of Last Amended Judgment if Applicable)

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Case No: 5:02CR34-05

USM No: 17735-058

Tanzania C. Cannon-Eckerle

Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months **is reduced to** _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level:	<u>31</u>	Amended Offense Level:	<u>29</u>
Criminal History Category:	<u>VI</u>	Criminal History Category:	<u>VI</u>
Previous Guideline Range:	<u>240</u> to <u>240</u> months	Amended Guideline Range:	<u>240</u> to <u>240</u> months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.

Pursuant to USSG §5G1.1, the sentence imposed may not be less than the statutorily required minimum sentence. In this case, the statutory mandatory minimum sentence was deemed to be the guideline sentence under § 5G1.1(b). If Amendment 706 (Retroactive Crack Cocaine Amendment) had been in effect at the time of the original sentencing, it would not have been of benefit to the

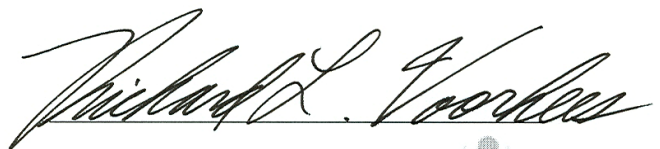
- ☒ Other (explain): Defendant because the statutorily mandated minimum sentence would have been the guideline sentence. Because the Defendant's original sentence was based on the statutory minimum rather than the otherwise applicable guideline sentence, notwithstanding departure under USSG § 5K1.1 and 18 U.S.C. § 3553(e), Amendment 706 has no effect on the Defendant's sentence.

Except as provided above, all provisions of the judgment dated 08/18/2003 shall remain in effect.

IT IS SO ORDERED.

Order Date: June 17, 2008

Effective Date: _____
(if different from order date)



Richard L. Voorhees
United States District Judge

